T 75/989

How to Keep Out of Trouble

. . . Ethical Conduct
for Federal Employees . . .

in Brief
2nd Edition

OFFICE OF GOVERNMENT ETHICS

OGE 6
Rev. July 1989

PM 1.8:

READEX FICHE best copy available

Office of Government Ethics
P.O. Box 14108
Washington, D.C. 20044
(FTS) 632-7642

THIS PAMPHLET MAY BE REPRODUCED IN WHOLE OR IN PART FOR USE BY YOUR AGENCY.

FOREWORD

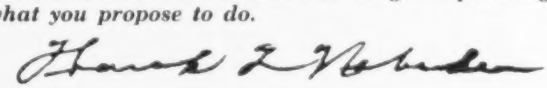
This pamphlet explains the thrust and practical application of Federal ethics laws and regulations. It is not exhaustive of the various ethical restrictions placed on you, or the situations which may confront you. Moreover, you might be subject to other agency-specific restrictions. As such, this primer is designed to anticipate some of the more common issues facing Federal employees.

The Office of Government Ethics has a statutory responsibility to promote understanding of these standards in executive agencies. As government employees, we must recognize that the public service is, indeed, a public trust. You must have more than a knowledge of the *letter of the law* and so this pamphlet provides you with examples which produce an understanding of the *spirit of the law.*

In my September 12, 1988 memorandum to Designated Agency Ethics Officials it was stated that:

> . . . simply avoiding criminal conduct is not the mark of public service. The duties imposed by non-criminal standards are far harder to discharge. They may even be strange and seem overly restrictive to some joining government for the first time . . . problems such as these [involving a few high government officials] are not widespread in the executive branch and the majority of officers and employees are hard working and loyal individuals who make every effort to adhere to the high ethical standards the public has a right to expect from them and that they expect from themselves.

Remember, you must keep informed of the rules and, if you have even a slight hesitation or questions about the propriety of proposed action, ask your ethics official about it first. *Don't be caught explaining what you did; explain what you propose to do.*



Frank Q. Nebeker
Director

PREFACE

At the time of publication of this second edition of the pamphlet, the body of ethics laws, regulations, and rules is in a state of flux. Specifically, on April 12, 1989, President Bush issued new Executive Order 12674, which replaced Executive Order 11222, and forwarded to Congress a proposed comprehensive revision of the various ethics laws in the form of the "Government-wide Ethics Act of 1989."

Under the savings provision of Executive Order 12674, regulations which were issued under Executive Order 11222 remain in force and effect until new implementing regulations are issued by the Office of Government Ethics. To this extent, the guidance and examples in the pamphlet have remained unchanged and are essentially accurate. However, Executive Order 12674 contains a new ban on the receipt of outside earned income by full-time noncareer Presidential appointees of the executive branch, including full-time employees in the White House Office and the Office of Policy Development. Notwithstanding this requirement, employees may carry out preexisting contractual obligations entered into before the April 12, 1989 effective date of the new Order.

A revised edition of this pamphlet will be forthcoming once the new regulations are approved implementing the Executive Order. Moreover, there may also be another revised edition depending on the proposed legislation eventually passed by Congress.

INTRODUCTION

As officers and employees of the Federal Government, we must all conform to high standards of ethical conduct. We are judged not only by our official actions and conduct, but also by our personal activities when they are related to our work for the Government. The Government relies on us as its representatives to perform Government business properly, to protect Government interests, and to meet the high ethical standards of public service.

The purpose of this pamphlet is to present the basic laws and regulations on ethical conduct in an easy-to-read, easy-to-understand format. This pamphlet condenses the regulations into a concise document that you can use as a ready reference for answering questions. The pamphlet does not replace existing laws and regulations which should be consulted for the precise requirements.

For the most part, the standards of conduct and conflict of interest laws apply to all Government officers and employees including special Government employees, such as experts, consultants, and advisory committee members. You are responsible for knowing these laws and regulations as well as the specific policies and procedures of your own agency.

Employees, supervisors, and management officials all share the responsibility for ensuring that high standards of ethical conduct are maintained within the Government. You are required to become familiar with the standards of conduct regulations and to exercise judgment to avoid any action that might result in or create the appearance of misconduct or conflict of interest. Supervisors and managers must become familiar with the standards of conduct regulations and apply the standards to the work they do and supervise.

TABLE OF CONTENTS

	Pages
INTRODUCTION	i
ETHICAL CONDUCT FOR ALL EMPLOYEES	
Where Can You Get Guidance on the Ethics Laws and Regulations?	1
What Are the General Standards of Conduct?	1
Are You Allowed to Use Government Property for Personal Reasons?	2
What Is the Government's Policy on the Acceptance of Gifts, Entertainment, and Favors?	2
What about Using Information Picked Up on the Job?	5
What Happens if You Fail to Pay Your Debts?	5
Can You Gamble While on Duty?	6
Can You Have a Second Job Outside of the Government?	6
Can You Obtain Personal Gain From Your Official Position or Actions?	7
What Are Post-Employment Restrictions?	9
Are Experts, Consultants and Advisory Committee Members Covered by the Standards of Conduct Regulations and the Conflict of Interest Laws?	10
What if You Want to Report a Violation of the Standards of Conduct Regulations or the Conflict of Interest Laws?	10
Are You Required to Give Statements to Investigative Officials?	11
What Action May Be Taken if You Violate the Standards of Conduct Regulations or the Conflict of Interest Laws?	11

THE HATCH ACT

What are the Political Do's and Don'ts for Federal Employees? 12

APPENDIX

A. Reference Chart to Laws and Regulations A-1

ETHICAL CONDUCT FOR ALL EMPLOYEES

WHERE CAN YOU GET GUIDANCE ON THE ETHICS LAWS AND REGULATIONS?

You are encouraged to seek guidance whenever you are unsure whether your actions or planned actions are in accordance with the standards. There are several sources within the Government that you can rely on for guidance on ethical matters. Among them are:

- The Office of Government Ethics
- The Office of the General Counsel
- The Designated Agency Ethics Official
- The Personnel Office
- The Office of the Inspector General

WHAT ARE THE GENERAL STANDARDS OF CONDUCT?

An employee must avoid any action that might result in or create the appearance of:

- Using public office for private gain;
- Giving preferential treatment to anyone;
- Impeding Government efficiency or economy;
- Losing complete independence or impartiality;
- Making a Government decision outside official channels; or
- Affecting adversely the confidence of the public in the integrity of the Government.

Employees must be particularly careful that private interests and activities do not impact adversely on or conflict with their public duties. The following sections address specific questions that you may have.

ARE YOU ALLOWED TO USE GOVERNMENT PROPERTY FOR PERSONAL REASONS?

No. You have a positive duty to protect and conserve Federal property and to obey all rules and regulations regarding its use. You cannot directly or indirectly use or allow the use of Government property for other than officially approved activities. This includes property leased to the Government. (5 C.F.R. 735.205)

A few examples of the improper use of Government property include:

- Using Government envelopes to send payroll checks to the bank or for other personal matters.
- Using Government photocopy equipment for personal matters.
- Using a Government-owned, leased, or rented vehicle or aircraft for non-official purposes.
- Using Government telephones to make personal telephone calls. (This includes local and long distance calls over both commercial facilities and the Federal Telecommunications System.)
- Selling commercial products in a Government building.
- Using Government computers and word processors for personal matters.

WHAT IS THE GOVERNMENT'S POLICY ON THE ACCEPTANCE OF GIFTS, ENTERTAINMENT, AND FAVORS?

You may not solicit or accept anything of monetary value, including gifts, gratuities, favors, entertainment or loans from any person who:

- Has or is seeking to obtain contractual or other business or financial relations with your agency.

- Conducts operations or activities that are regulated by your agency; or

- Has interests that may be substantially affected by the performance or nonperformance of your official duties. (5 C.F.R. 735.202)

Your agency may have additional restrictions or may provide exceptions for the following:

- Gifts, gratuities, favors, entertainment, loans or similar favors of monetary value that stem from a family or personal relationship when the circumstances make it clear that it is that relationship rather than the business of the person concerned that motivates the gift;

- Loans from banks or other financial institutions on customary terms;

- Unsolicited advertising or promotional material of nominal value such as pens, note pads, and calendars;

- Food or refreshments of nominal value, served on infrequent occasions, in the ordinary course of a luncheon or dinner meeting and only if you are properly in attendance and there is not a reasonable opportunity to pay, or if the food is offered to all participants attending the meeting or convention.

- Travel and subsistence expenses in certain cases when authorized by your agency.

Listed below are examples of instances when you may be offered gifts or favors and the proper action to take in each case:

- You are on the premises of Company X participating in a meeting at lunchtime. A representative of Company X provides a meal for all meeting participants from a Company X facility and there is no established method for payment. You may accept the meal, unless your agency specifically prohibits it.

- You are on the premises of Company X and you go to a restaurant for lunch with a Company X salesperson. The salesperson offers to pay the bill. Since it is expected that employees pay for their own lunches, you may not accept the salesperson's offer to buy lunch.

You should be aware that there are criminal provisions relating to the acceptance of gifts, entertainment, and favors found in Title 18 of the United States Code.

One provision is Title 18 U.S.C. 209, which prohibits you from receiving any salary as compensation for services as an employee of the Government from any source other than the United States.

Example:

> You are asked to give a speech in your official capacity. You may not accept a fee for a speech given as part of your Government duties.

This law does not prohibit you from continuing to participate in *a bona fide* employee welfare or benefit plan maintained by a former employer. It also does not prohibit you from receiving compensation from a state, county, or municipality, unless prohibited under your agency's Standards of Conduct.

Gifts to superiors:

You may not solicit a contribution from another employee for a gift to an official superior, or make a donation to a superior. Also, you may not accept a gift from an employee receiving less pay than you. (5 U.S.C. 7351)

Most agencies allow voluntary gifts of nominal value or donations in a nominal amount on a special occasion such as marriage, illness, or retirement.

Example:

Your office decides to take up a collection for your boss who is being promoted within the office. This would not qualify for the exception for special occasions because it involves a continuing workplace relationship.

WHAT ABOUT USING INFORMATION PICKED UP ON THE JOB?

You may not use, for furthering a private interest, information obtained through your Government job that has not been made available to the general public. (5 C.F.R. 735.206) For example, you would not be free to use information that has not been dispersed by the agency or is available to a member of the public only by special request.

WHAT HAPPENS IF YOU FAIL TO PAY YOUR DEBTS?

You should meet your just financial obligations in a proper and timely manner. Failure to do so reflects adversely on the Government and on your agency and is considered improper conduct. (5 C.F.R. 735.207)

CAN YOU GAMBLE WHILE ON DUTY?

No. You are not allowed to participate in any gambling activity while on Government-owned or leased property or while on duty for the Government. This includes the operation of a gambling device in conducting a lottery or pool, in a game for money or property, or in selling or purchasing a numbers slip or ticket. (5 C.F.R. 735.208)

CAN YOU HAVE A SECOND JOB OUTSIDE OF THE GOVERNMENT?

You may engage in outside employment, with or without compensation, but only if it will not affect adversely the performance of your official duties and will not conflict with your duties. Such work may include civic, charitable, religious, and community undertakings. You may not participate in outside employment which:

- Tends to impair your mental or physical capacity to perform Government duties and responsibilities in an acceptable manner;
- Is likely to result in criticism or cause embarrassment to your agency;
- Creates a real or apparent conflict of interest;
- Takes your time and attention during your official work hours. (5 C.F.R. 735.203)

If you are considering outside employment, you may be required to obtain advance administrative approval for certain activities as required by your agency.

There are other types of outside activity that you may be interested in pursuing such as teaching, lecturing, and writing. Advance approval may be required by your agency. A few of the most important restrictions on outside activities are as follows:

- You may not use Government-financed time or supplies;

- You may not use or allow the use of official information that has not been made available to the general public;

- You may not promote the use of your official title or affiliation with your agency, and allow no suggestion of official endorsement.

Title 18 U.S.C. 203 and 205 prohibit you from representing another person before an agency or court of the Federal or D.C. Governments, and from receiving payment for someone else's representation before an agency of the Federal or D.C. Governments. Your representation is prohibited even when uncompensated. For example:

- Unless specifically prohibited by your agency, you may prepare income tax returns for others in your free time, but you may not argue before the Internal Revenue Service on behalf of your client, if there is a dispute over the return.

- You may not represent a non-profit organization of which you are a member before a Federal agency in a request for a grant even though you would not be paid for the representation.

Exceptions:

Generally, you are allowed to represent your parents, your spouse or child, or anyone for whom you serve as a guardian.

You also may provide testimony under oath.

CAN YOU OBTAIN PERSONAL GAIN FROM YOUR OFFICIAL POSITION OR ACTIONS?

Generally speaking, you cannot participate personally and substantially as a Government employee in a matter in which you have a financial interest. There is no minimum amount of value or control that constitutes a financial interest. This prohibition also applies if any of the following individuals or organizations have a financial interest in the matter:

- Your spouse;

- Your minor child;

- Your partner;

- An organization in which you serve as an officer, director, trustee, partner or employee; or

- A person or organization with which you are negotiating for prospective employment or have an arrangement for prospective employment. (18 U.S.C. 208)

The standards of conduct regulations go further in prohibiting you from having a financial interest that conflicts or even appears to conflict with your Government duties and responsibilities. (5 C.F.R. 735.204)

The following cases are examples of conflict of interest situations:

- You own a single share of stock in a widely-held corporation. If the corporation is likely to be affected by a matter in which you will participate as a Government official, you may violate 18 U.S.C. 208.

- You have a paid part-time position with a non-Federal organization. If the organization is likely to be affected by a matter in which you will participate as a Government official, you would violate 18 U.S.C. 208.

- You are administering a Government contract with a firm owned by your brother-in-law. You probably would not violate 18 U.S.C. 208 because your brother-in-law's financial interests are not considered to be yours, but you would have the appearance of a conflict, which would violate the standards of conduct.

- You are conducting an audit of a private organization in the course of your Government job. The head of this private organization asks you to meet with her to discuss leaving Government to join her organization. Unless you immediately reject the offer, you would have to disqualify yourself from further participation in the audit in order not to violate 18 U.S.C. 208.

The head of your agency can grant you a waiver under 18 U.S.C. 208 if your financial interest is found to be not so substantial as to affect the integrity of your services. A general waiver can also be granted to a group of employees for certain interests found to be too remote or inconsequential to affect the integrity of the employees' services. The general waivers must be published in the Federal Register.

WHAT ARE POST-EMPLOYMENT RESTRICTIONS?

Post-employment restrictions can be found in Title 18 of the United States Code. Title 18 U.S.C. 207 prohibits former Government employees from "switching sides." For example, as a former employee you would be prohibited permanently from acting as another person's representative to the Government in certain matters in which you have been involved substantially while in Federal service.

Also, for two years you would be prohibited from representing another person to the Government in certain matters which were pending under your official responsibility during your last year of Government service.

Examples:

- As a former Government employee, you would be prohibited from representing another person on a contract you administered while with the Government, but you could work on the contract in the contractor's office.

- As a former supervisor with the Government, you would be prohibited for two years from representing another person before the Government on a case that was under your official responsibility during your last year of Government service even if you did not actually work on the case yourself.

There are additional restrictions, one of which imposes a one-year, agency specific cooling-off period, that apply to certain senior employees whose positions are listed in the Federal Register each year.

If you are planning to leave the Government, you should see your personnel office or your Designated Agency Ethics Official for more information about this law.

ARE EXPERTS, CONSULTANTS, AND ADVISORY COMMITTEE MEMBERS COVERED BY THE STANDARDS OF CONDUCT REGULATIONS AND THE CONFLICT OF INTEREST LAWS?

Yes. The standards of conduct regulations generally apply to those individuals, known as special Government employees who do not serve for more than 130 days in a year. If you are a special Government employee, you should read sections 203, 205, 207, and 208 of Title 18, United States Code, all of which carry criminal penalties related to conflicts of interest, and the standards of conduct regulations, where applicable.

WHAT IF YOU WANT TO REPORT A VIOLATION OF THE STANDARDS OF CONDUCT REGULATIONS OR THE CONFLICT OF INTEREST LAWS?

If you know of criminal violations or violations of the standards of conduct regulations committed by other employees of your agency or any outsider, or if you know of any misconduct or abuses of authority, you are responsible for reporting the violations to your supervisor, the Office of the Inspector General (where applicable), your Designated Agency Ethics Official, or your personnel office . Note, failure to report a criminal violation promptly could result in disciplinary action being taken against the employee having such knowledge. If you want to report violations to the Office of the Inspector General, use the IG "hotline," where one exists.

ARE YOU REQUIRED TO GIVE STATEMENTS TO INVESTIGATIVE OFFICIALS?

You are required to assist the Inspector General and other investigative officials. This requirement includes the giving of statements or evidence to investigators, auditors, or inspectors of the Inspector General's Office or to other investigators authorized to conduct investigations into potential violations. (NOTE: You always retain your constitutional rights, including the rights to counsel and against self-incrimination.)

WHAT ACTION MAY BE TAKEN IF YOU VIOLATE THE STANDARDS OF CONDUCT REGULATIONS OR THE CONFLICT OF INTEREST LAWS?

You may be subject to disciplinary action if you violate any of the standards of conduct regulations. This includes supplemental standards published by your agency. The type of action to be taken must be determined in relation to the specific violation. Some types of disciplinary action that may be considered are: admonishment, written reprimand, reassignment, suspension, demotion and removal. When such actions are taken, applicable laws, regulations, and procedures must be followed. In addition, violations of Federal criminal statutes may subject the violator to criminal prosecution. If you have questions concerning disciplinary action, discuss your concerns with your supervisor or your personnel office.

What Are The Political Do's & Don'ts For Federal Employees?

----------Covered Employees----------

With very few exceptions, all employees in the executive branch of the Federal Government are subject to the political activity provisions of the Hatch Act. Employees of the U.S. Postal Service and the District of Columbia government are also subject to this law.

- **May** register and vote as they choose
- **May** assist in voter registration drives
- **May** express opinions about candidates and issues
- **May** participate in campaigns where none of the candidates represent a political party
- **May** contribute money to political organizations or attend political fund-raising functions
- **May** wear or display political badges, buttons, or stickers
- **May** attend political rallies and meetings
- **May** join political clubs or parties
- **May** sign nominating petitions
- **May** campaign for or against referendum questions, constitutional amendments, and municipal ordinances
- **May not** be candidates for public office in partisan elections
- **May not** campaign for or against a candidate or slate of candidates in partisan elections
- **May not** make campaign speeches or engage in other campaign activities to elect partisan candidates
- **May not** collect contributions or sell tickets to political fund-raising functions
- **May not** distribute campaign material in partisan elections
- **May not** organize or manage political rallies or meetings
- **May not** hold office in political clubs or parties
- **May not** circulate nominating petitions
- **May not** work to register voters for one party only

An election is partisan if any candidate for an elected public office is running as a representative of a political party whose presidential candidate received electoral votes in the last presidential election.

Provided Courtesy of the Office of the Special Counsel, U.S. Merit Systems Protection Board.

APPENDIX

Reference Chart to Laws and Regulations

Title in Handbook	Page Number	Citation to Law or Regulation
What are the General Standards of Conduct	1	5 C.F.R. 735.201a
Are You Allowed to Use Government Property for Personal Reasons?	2	5 C.F.R. 735.205
What is the Government's Policy on the Acceptance of Gifts, Entertainment, and Favors?	2	5 C.F.R. 735.202 & 18 U.S.C. 201 & 209
What about Using Information Picked up on the Job?	5	5 C.F.R. 735.206
What Happens if You Fail to Pay Your Debts?	5	5 C.F.R. 735.207
Can You Gamble while on Duty?	6	5 C.F.R. 735.208
Can You Have a Second Job Outside Government?	6	5 C.F.R. 735.203, 205, .206, & .201a(a); & 18 U.S.C. 203 & 205
Can You Obtain Personal Gain from Your Official Position or Actions?	7	5 C.F.R. 735.204 & 18 U.S.C. 208
What are Post-Employment Restrictions?	9	18 U.S.C. 207
Are Experts, Consultants, and Advisory Committee Members Covered by the Standards of Conduct and the Conflict of Interest Laws?	10	5 C.F.R. 735 Subpart C, 18 U.S.C. 203, 205, 207, & 208